police, sanitary, and other regulations as are not in conflict with general laws." The control of fish and game falls within the police power.[7] It is a general rule of constitutional interpretation that two sections, conflicting or partially conflicting, are to be read together as a harmonious whole in so far as possible, the more definite to control the more general.[8] The newer section does not expressly repeal the older in regard to the powers of local bodies to regulate fish and game. Its purpose is rather to increase the power of the legislature. The powers of the legislature are not limited by those of local bodies, but are absolute for making general laws. Prior to 1902, this limitation as to general laws prevented the legislature from dividing the state into fish and game districts and making different rules for each. To remove this restriction was the purpose of the amendment. Therefore, the later section does not expressly exclude control of fish and game under the older; the older is repealed only pro tanto; and the local bodies would seem to have power to act until the legislature asserts its rights. Accordingly, it has been held that the amendment of 1902 did not of itself repeal the local rules in force at its adoption, and that these rules remained effective until the legislature acted.[9] If the view that the state legislature and the various local bodies have concurrent powers is accepted, ordinances passed by a county board of supervisors, subsequent to the adoption of the amendment and prior to the passage of conflicting laws by the legislature, are constitutional, and convictions under them are valid.

J. L. K.

CONTRACTS: JOINT OR JOINT AND SEVERAL?—Contracts are either several, joint, or joint and several, according to the intention of the parties to the contract. The intention is gathered from the construction and interpretation of the language used. It has been generally held that a promise, or obligation, undertaken by more than one person, will be presumed to be joint, in the absence of an express intent to make it several, or joint and several.[1] If the language in the contract is ambiguous the surrounding circumstances and the interests of the parties will be looked at in determining what the intention of the parties was.[2]

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[7] Ex parte Maier (1894), 103 Cal. 476, 37 Pac. 402, 42 Am. St. Rep. 129; Lawton v. Steele (1894), 152 U. S. 133, 38 L. Ed. 385, 14 Sup. Ct. Rep. 499.

[8] Cooley on Constitutional Limitations (7th ed.), 92; Martin v. Election Commissioners (1899), 126 Cal. 404, 58 Pac. 932.

[9] In re Cole (1909), 12 Cal. App. 290, 107 Pac. 581.

[1] Elliot v. Bell (1893), 37 W. Va. 834, 17 S. E. 399; City of Philadelphia v. Reeves (1865), 48 Pa. St. 472; White v. Tyndall [1888], 13 App. Cas. 263.

[2] Ernst v. Bartle (1800), 1 Johns. Cas. 319; Eller v. Lacy (1894), 137 Ind. 436, 36 N. E. 1088; White v. Tyndall [1888], 13 App. Cas. 263.

In the case of *Shelton v. Michael*,[3] the plaintiff entered into an agreement with the defendants, nine in number, engaging to construct a wagon road, from their timber claims to a public highway, for which they were to pay a certain sum. The contract was silent as to the nature of the defendant's obligation. The court held the obligation to be joint and several inasmuch as all of the defendants received some benefit from the construction of the road. In California the situation is governed by the Civil Code[4] which departs somewhat from the prevailing view, as is evidenced by the principal case.[5] An obligation imposed on several persons will be presumed to be joint, and not several, in the absence of express words of severance unless all of the obligors receive some benefit, present or past, from the consideration for which their promise has been given, in which case the obligation will be presumed to be joint and several. This has the effect of making most obligations entered into in California, by more than one person, joint and several.[6] An examination of the authorities in California, which are few in number, causes more or less confusion. The decisions are unimpeachable, but the courts have rendered their opinions with no great degree of clarity. In Harrison v. McCormick[7] it was said: "The rule is well settled that several persons contracting together with the same party for one and the same act shall be regarded as jointly and not as individually or separately liable, in the absence of any words to show that a distinct as well as entire liability was intended to fasten upon the promisors." This rule is well settled in other jurisdictions, but not in California. Here the exception to the rule supersedes and becomes itself the rule. Where a promise is made by two or more persons in the singular number it is at common law prima facie a several obligation only, unless the instrument as a whole shows a contrary intent.[8] In California this situation has also been changed by the Civil Code[9] and the promise is presumed to be joint and several.[10]

A. I. D.

CRIMINAL LAW: MISCARRIAGE OF JUSTICE: CONSTITUTIONAL AMENDMENT.—Under section 4½ of Article VI of the California

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[3] (Aug. 30, 1916), 23 Cal. App. Dec. 316, 160 Pac. 578.

[4] Cal. Civ. Code, §§ 1431, 1659.

[5] Supra, n. 3.

[6] Gummer v. Mairs (1903), 140 Cal. 535, 74 Pac. 26; Farmers' Exchange Bank v. Morse (1900), 129 Cal. 239, 61 Pac. 1088; Bell v. Adams (1907), 150 Cal. 772, 90 Pac. 118; Moreing v. Weber (1906), 3 Cal. App. 14, 84 Pac. 220.

[7] (1886), 69 Cal. 616, 11 Pac. 456.

[8] Maiden v. Webster (1868), 30 Ind. 317; Hemmenway v. Stone (1810), 7 Mass. 58, 5 Am. Dec. 27.

[9] Cal. Civ. Code, § 1660.

[10] Bagley v. Cohen (1898), 121 Cal. 604, 53 Pac. 1117; Farmers' Exchange Bank v. Altura Gold M. & Min. Co. (1900), 129 Cal. 263, 61 Pac. 1077.